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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(MD)No.732 of 2005
and
M.P.(MD)Nos.1 to 6 of 2011

M.Soman .. Petitioner/7th Defendant/
Petitioner

Vs.

1. G.Daniel
2. Patrose
3. Flarance
4. Thangaian
5. Dasan
6. Kamalan .. Respondents/Defendants/
Respondents

PRAYER: Petition is filed under Article 227 of the Constitution of India, against the order and decree dated 09.07.2004 and made in I.A.No.473 of 2002 in O.S.No.552 of 1980 on the file of the I Additional District Munsif Court, Kuzhithurai.

For Petitioner : Mr. M.A.Abdul Wahab
For Respondent Nos.2 and 3 : Mr. K.N.Thambi
For R-4 : No appearance.

O R D E R

This Revision arises out of the order passed by the I Additional District Munsif Court, Kuzhithurai in I.A.No.473 of 2002 in O.S.No.552 of 1980.

2. The petitioner is the 7th defendant in the suit. The original plaintiff Immanuel is the father of the petitioner. A suit was filed for partition claiming 50% share in the suit properties. After the demise of the sole plaintiff, an application was filed by the petitioner for transposing him as second plaintiff to pursue the suit. Since the application was dismissed, the present petition has been filed.

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3. Mr.M.A.Abdul Wahab, learned counsel for the petitioner would submit that admittedly, the sole plaintiff in the pending suit died and the petitioner is the only legal heir of the plaintiff. Since he was already impleaded as 7th defendant in the suit, he filed a petition to transpose him as second plaintiff. In the interim application, the merits of the case cannot be decided.

4. Per contra Mr.K.N.Thambi, learned counsel for the respondents would submit that there are two items in the suit property and the original plaintiff/the father of this petitioner sold both items to defendant Nos.2 and 6. Further, the petitioner instituted another suit in O.S.No.41 of 1991, against the purchasers of the suit property, namely, the defendant Nos.2 and 6 and after contest, the suit was dismissed on 13.09.1999.

5. The Judgment and decree of the Trial Court was confirmed by the Appellate Court in A.S.No.3 of 1999 on 30.04.2001. That the Judgment passed in the suit in O.S.No.41 of 1991 has attained finality, as there was no further appeal filed by the petitioner. It is further submitted that when the suit was pending, the petitioner was impleaded as 7th defendant by order dated 19.02.2001 in I.A.No.65 of 2000. When the petitioner has no right at all in the suit property, the application came to be filed only with an ulterior motive.

6. It is true that in the interim application, the merits of the case cannot be decided. In the instant case, the respondents have produced the Judgments passed in O.S.No.41 of 1991 and A.S.No.3 of 1999 which have been marked Ex.R.1 and Ex.R.2. Both the exhibits would reveal, the suit was filed by the petitioner to set aside the sale of both items effected by his father/original plaintiff Immanuel was dismissed and the findings of the Trial Court was confirmed by the Appellate Court. The petitioner cannot dispute the above facts.

7. In view of the above, the Trial Court in my considered opinion, rightly dismissed the petition only to prevent the petitioner to pursue the frivolous litigation. I do not find any merits in this Revision. In the result, this Civil Revision petition is dismissed. Consequently, connected Miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(W)

/True copy/

Sub Assistant Registrar

To
The I Additional District Munsif Court, Kuzhithurai.
+1 cc to M/s.K.N.Thambi, Advocate in SR.No.31225

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